Supreme Court, U.S.
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(3)

No. 99-2019

IN THE

Supreme Court of the United States

JOSE LUIS ESCALERA, an individual,

Petitioner,

v.

TIERCO WATER PARK, INC., d/b/a WHITE WATER BAY THEME PARK; and PREMIER PARKS, INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

REPLY BRIEF

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PETITIONER'S RESPONSE TO RESPONDENTS' OBJECTION TO PETITION FOR WRIT OF CERTIORARI

The Petitioner, Jose Luis Escalera, responds to the Objection to his Petition for Writ of Certiorari and without realleging or reiterating any of the allegations and claims in his Petition for Writ of Certiorari, responds to the Respondents' claim that issues were not raised in the lower courts. It is Petitioner's contention that the "Public Bathing Place Standards" as construed by the Oklahoma courts do not offer equal protection to persons from "metric" countries, to-wit:

(1) His constitutional rights were violated because he was impermissibly classified according to his national origin; and

(2) Oklahoma violated the Metric Conversion Act.

(3) Petitioner Jose Luis Escalera, a quadriplegic as the result of a diving accident, dove in a pool whose only depth marker contained the numeral "3" with no explanatory unit of measurement.

(4) Petitioner Jose Luis Escalera was born and raised in Mexico, testified that he understood the "3" to mean 3 meters (which would have been approximately 9 feet) and that it was safe for diving given the size of the pool, lack of warnings, turbidity of the water and safety warnings displayed in other areas of the park.

(5) The Petitioner offered proof that other water parks owned by Respondents used signs showing *both*

feet and meters. However, the Oklahoma Courts' ruling has the effect of holding that Oklahoma State policy is that the depth signs are to be understood to be in feet in contraversion of the federally mandated preference for the metric measures.

(6) The Oklahoma Courts charge persons in Oklahoma with knowledge that the federal policy favoring the metric system throughout the United States is suspended in Oklahoma and that persons in the state of Oklahoma must be aware that pool measurement signs in Oklahoma will only be displayed in "feet."

The record of the places in the lower courts in which the Constitutional issues were raised are as follows:

I. At the Trial Court Level.

In Petitioner's Response to the Motion for Summary Judgment at:

(1) Page 14 — "The '3' on the side of the pool could mean '3 meters' or '3 feet' to a person of Hispanic origins." ". . . Hispanics in Oklahoma City are not entitled to the protection afforded by this same Defendant in its Arlington, Texas, parks where the depths are measured in meters."

(2) Page 15 — "The Court may take judicial notice that Congress passed the Metric Conversion Act which designated the metric system as the preferred system."

II. Transcript of the Hearing in the Trial Court:

1. Page 7. The Court —

> Whether the Plaintiff being of Hispanic origin was confused by the number '3' is something you are relying upon heavily. Whether there is a duty to put the numeral '3' as the depth marker in languages and meters other than the measurement to notify people from other countries, seems to go beyond any requirements.

2. Page 9. Petitioner's Counsel — If you come to America you must use feet and inches is a racist statement.

3. Page 10. Petitioner's Counsel — To persons from metric countries a "3" is known to mean meters. The preferred system adopted by Congress is the metric system.

4. Page 19 — Petitioner's Counsel — "The writer of this brief states that in America we use 'feet' and 'meters' is implying that somebody Hispanic who relies on the metric system is doing something improper and that's racist."

III. Court of Civil Appeals Opinion.

1. Page 3 — Plaintiff contends that because he was raised in Mexico, a jury may find he reasonably assumed that the depth was 3 "meters" rather than 3 "feet." We disagree. Inasmuch as the Plaintiff has lived in the United States for the past 12 years,

a reasonable person exercising fair and impartial judgment could not reach the conclusion that the depth of the catch pool was 3 meters.

IV. Petition for Re-Hearing in the Court of Appeals.

1. Page 2 –3 — While a U.S. native may belief pools are measured in terms of "feet," it is incorrect to hold as a matter of law that such belief is held by all persons of this country, regardless of their heritage.

2. Page 11 — The emphasis on the fact that Mr. Escalera lived in the U.S. for 12 years carries with it the implication that he should have known the English system was being used to measure the depth of the pool.

3. Page 14 — The trial court discounted or ignored the evidence of widespread and Congressional-sanctioned use of the metric system in this country.

CONCLUSION

For the reasons stated above, Petitioner's Petition for Writ of Certiorari is well taken and should be granted.

Respectfully submitted,

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